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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,887	06/01/2001	Robert Angelo Mercuri	P-1047/N-7343	2070

7590 09/02/2003
James R. Cartiglia
Grafech, Inc.
Brandywine West
1521 Concord Pike, Suite 301
Wilmington, DE 19803

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EXAMINER

PIAZZA CORCORAN, GLADYS JOSEFINA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A-3-11

Advisory Action

Application No.

09/871,887

Applicant(s)

MERCURI, ROBERT ANGELO

Examiner

Gladys J Piazza Corcoran

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14 and 17-20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 2. NOTE:

Claim 12 is not a correct copy of the originally presented claim, filed on March 4, 2003. The changes raise the new issue of the claim being unclear by reciting a second flexible graphite sheet without first reciting a first flexible graphite sheet. Furthermore, claims 11 and 17-20 do not comply with the Final Rule 37 CFR 1.121, effective July 30, 2003 where the status indicator must be (previously presented) not (previously added). More information on the Rule can be found at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/moreinfoamdtpac.htm> and in the Federal Register (68 Fed Reg 38611).


Continuation of 10. Other:

Applicant argues on page 7 that while the Dettling reference discloses a method of sealing a bipolar assembly, it does not disclose the claimed method of sealing a bipolar assembly. The Dettling reference was cited to show it is known in the art to bond and seal bipolar graphite materials together where it is recognized the importance of a good seal between the material layers. As stated in the prior Office Actions, it is well known in the bonding art in general to provide parts with interlocking configurations in order to secure a tight seal or bond between the plates. The references Chi and van Ommering were further cited to show particular examples in the fuel cell art that show the known method of providing parts with interlocking configurations in order to secure a tight seal or bond between the plates.

Applicant argues on page 7 that the secondary references are only cited as examples of different sealing or bonding disclosures found in the art, none which consist of the protrusion/recess bonding means discloses and claimed. Applicant is incorrect in stating that none of the references consist of the protrusion/recess bonding means discloses and claimed. The claims require that one component of the bipolar plate assembly has a protrusion and a second component of the bipolar plate has a recess complementary to the protrusion and receiving the protrusion. The references Chi and van Ommering DO disclose protrusion and recess means for bonding plates in the fuel cell art in order to provide a stronger seal between the plates (Chi: column 3, lines 43-47; van Ommering: column 6, lines 29-50).

Applicant further argues on pages 7-8 that it is not proper to rely on what is well known in the art when what is asserted to be we known is a key or critical aspect of the rejected claims. Applicant further states that nothing in the cited references nor in the fuel art discloses a bipolar graphite article formed from graphite sheets one with a protrusion, the other with a recess and assembled with the protrusion in the recess. Applicant is incorrect in stating that the Examiner relied on what is well known in the art for what is a key or critical aspect of the claim. The Examiner did not state that it was well known in the art to use protrusions and recesses on the backsides of graphite components to assemble the components. The Examiner stated that it is well known in the bonding art to provide two plates with interlocking configurations in order to secure a tight seal or bond between the plates. Applicant has not argued that it is not known in the bonding arts to provide interlocking configurations. Furthermore, the Examiner cited the references Chi and van Ommering as evidence of the well known method of providing a protrusion and a recess in plates bonded to each other and which are particularly in the fuel cell art.

Applicant argues on page 8 that it is not appropriate to take notice of facts without citation of a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known. Applicant further argues on page 8 that taking notice of facts as being well known in the art should only be done to "fill in the gaps" in an insubstantial manner and never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which rejection was based. Finally, Applicant further states that the facts not seen in any of the prior art references are asserted to be we known as a way providing the principle support upon which the rejection is based rather than to simply fill in the gaps in an insubstantial manner. It is noted, Applicant has not argued that it is not well known in the bonding arts to provide interlocking configurations in order to secure a tight seal or bond between the parts. Furthermore, the Examiner has in deed provided citation of the references Chi and van Ommering, not only to show that it is known to provide protrusions and recesses for sealing plates but also to show it is known in the particular art of Applicants invention, the fuel cell art.


Michael W. Ball
Supervisory Patent Examiner
Technology Center 1700

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